



BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS

Re Application of: Magaly Correa)
Serial No.: 09/785,382)
Filed: 02/16/2001)
Title: Blow Dryer with Styling Attachments)

Date: April 30, 2003
Group Art Unit: 3749
Examiner: Kathryn S. O'Malley

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CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Terry Lakos
Name:

7-24-03
Date:

TERRY LAKOS

BRIEF ON APPEAL UNDER 37 C.F.R. 1.192

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

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TECHNOLOGY CENTER R3700

Dear Sir:

This is an appeal from the Final Rejection, dated 01/29/2003 for the above identified application.

REAL PARTY IN INTEREST

The party(ies) named in the caption of this brief are the real parties of interest in this appeal.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Claims 1-10 and 12-17 remain pending and appealed in the present applications. Claim 11 has been canceled, and is not subject to the present appeal.

STATUS OF AMENDMENTS

There have been no supplemental amendments filed after final rejection.

SUMMARY OF INVENTION

Referring to the specification page 5, line 3 through page 8, line 10, FIG. 1 and 2 show a hand held hair blow dryer apparatus 10 having a linearly elongated grappling handle 12 aligned along the base of the lateral centerline of the dryer 10. Extending from the handle 12 along the lateral centerline is a directional head 14 having an angularly disposed directional nozzle 16 directed perpendicularly from the lateral centerline. An air outlet port 18 is formed at the center of the nozzle 16 and is circumscribed by a peripheral rim 20. The head 14 supports heating coils 22 and encloses a blower (not shown) as with an otherwise conventional hair blow dryer. A brush attachment 30 is attached about the peripheral rim 20 covering the air outlet port 18 and attached to the head 14 by a brush attachment means 32. A power cord 24

extends from the handle 12 in a conventional fashion, and includes a hook grasping means 26 that will be described in greater detail below. Finally, an integral spray bottle 50 is formed integral to the directional head 14 having a entrance orifice 56 for filling an internal volume with water. A pump means 52 thereby allows water to be discharged through aeration nozzles 54 for providing a fluid mist in the direction of the nozzle 14. Such spray allows for the invention to re-wet hair while drying to aid in the styling process or for "touching up".

The blow dryer apparatus 10 further includes an integral spray element 54 through which a user may re-wet hair for styling purposes. The integral spray element 54 includes an internal volume 50 for housing the water used for spraying. The water is poured into the internal volume 50 via an entrance orifice 56. The water is pumped through vent apertures 55 by pressing of a trigger 52 positioned along the handle 12 and approximately opposite to the on/off switch

Referring to FIG. 3, the brush attachment 30 is shown in which a brush attachment base 34 is formed in a semi-cylindrical manner and supporting a plurality of attached bristles 36 extending outward therefrom in an aligned pattern. A plurality of air dispersion orifices 38 are formed penetrating the wall of the brush attachment base 34 to allow fluid communication of flowing air through the brush attachment means 32. It is envisioned that various aligned patterns of bristle attachment can be used. Similarly, it is also envisioned that the air dispersion orifices 38 are spaced and patterned between attached bristles, such as to allow airflow outward between adjacent bristles. Finally, the brush attachment means 32 is shown herein as a series of tethers, affixed at each end to the brush attachment base 34 and designed to circumscribe the head 14

in a manner that forms a firm mechanical connection of the base 34 to the outer peripheral rim 20. It is envisioned in this manner, the overall outer circumference of the base 34 would be flat and shaped generally similar to the shape of the air outlet port 18. In this manner, the base 34 can form a continuous connection about the rim 20 to prevent blowby of forced air from the outlet port 18 and thereby forcing the air to be communicated through the air dispersion orifices 38. Although a circumscribing tether is shown as an example embodiment of the attachment means 32, it is anticipated and understood that one skilled in the art, in conjunction with the enclosed teachings, could form an alternate attachment means consistent with the features and functionalities of the present invention. By way of example, and not by limitation, such alternate attachment means can include mechanically impinged fasteners interlocking between the base 34 and the peripheral rim 20.

Finally, referring to FIG. 4, a wall mounting wall bracket 40 is shown for use with the blow dryer and attachment of the present invention. The bracket 40 forms a retainer housing 42 with a front face surface 44 that forms a concave dryer receiving cavity 46 and a brush receiving cavity 48. The concave dryer receiving cavity 46 is shaped and formed such as to house and receive the hand held hair blow dryer apparatus 10. Held in by either a frictional form fit or an impinging retention tab, a cord passage conduit 47 penetrating the housing into the concave dryer receiving cavity 46 allows the power cord 24 to hang free of the housing 42. Similarly, a brush attachment receiving cavity 48 is formed in a concave fashion within the front face 44 and is shaped and formed such as to house and receive the brush attachment 30 by either a frictional form fit or an overextending impinging retention tab. Finally, it is anticipated

that a pair of blade contacts 60 extend outward from the rear of the bracket 40, and are provided for insertion into a conventional electrical power outlet. In this manner, at least one expansion electrical outlet 62, supported by the side or front of the housing 42 can allow easy and convenient attachment of the power cord 30. As such, it is envisioned that the blade contacts 60 are in electrical communication with the expansion electrical outlet 62

Referring finally to FIG. 5a-5d, a series of alternate brush attachments 30 are shown. Each is intended as being interchangeably attached within the scope of the above disclosure. Although other attachments are envisioned, FIG. 5a shows a large round brush having an overall diameter of approximately 1.75 inches. FIG. 5b shows a medium round brush having an overall diameter of approximately 1.25 inches. FIG. 5c shows a small round brush having an overall diameter of approximately 0.75 inches. And, FIG. 5d shows a flattened brush having an flattened, curved outer surface. In all cases, it is anticipated that each brush attachment is formed of wood, thereby providing sufficient structural strength, while not melting or breaking (as with plastic) or burning or singeing the hair (as with metal).

ISSUES

The issues on appeal are:

1. Are claims 1 and 3-5 anticipated under 35 U.S.C. 102(b) by Vallis?
2. Is claim 2 anticipated under 35 U.S.C. 103(a) by Vallis in view of Weiss?
3. Is claim 6 anticipated under 35 U.S.C. 103(a) by Vallis in view of Scivoletto?

4. Are claims 7 and 16 anticipated under 35 U.S.C. 103(a) by Vallis in view of Barr, Jr. and Sampson?
5. Is claim 15 anticipated under 35 U.S.C. 103(a) by Vallis in view of Braulke, III?
6. Is claim 17 anticipated under 35 U.S.C. 103(a) by Vallis, Barr, Jr., Sampson, and Braulke, III?
7. Are claims 12-14 anticipated under 35 U.S.C. 103(a) by Vallis alone?

GROUPING OF CLAIMS

Claims 1 and 3-5 form a first group of claims; claim 2 forms a second group of claims; claim 6 forms a third group of claims; claims 7 and 16 form a fourth group of claims; claim 15 forms a fifth group of claims; claim 17 forms a sixth group of claims; and claims 12-14 form a seventh group of claims. Each group of claims stands or falls independently of each other group.

ARGUMENT

1. Rejections under 35 U.S.C. 102(b)

Claims 1 and 3-5 were rejected as being anticipated under 35 U.S.C. 102(b) by Vallis. In undertaking to determine whether a reference anticipates a claim(s) under 35 U.S.C. § 102(b), a primary tenet is that the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Many differences exist between the design claimed in Vallis and the currently claimed design. The present invention includes a number of features that are unanticipated in the above mentioned references. These include:

- a directional head having an angularly disposed directional nozzle;
- brush attachment attached *about a peripheral rim* ;
- a brush attachment base formed in a semi-cylindrical manner ;
- air dispersion orifices spaced and patterned between attached bristles, such as to allow airflow outward between adjacent bristles;
- a brush attachment base is formed of wood;
- a brush attachment comprises a large round brush having an overall diameter of approximately 1.75 inches;
- in combination with a brush attachment comprises a medium round brush having an overall diameter of approximately 1.25 inches;
- in combination with a brush attachment comprises a small round brush having an overall diameter of approximately 0.75 inches.

These are features undisclosed and unanticipated in the art. Thus, in light of the numerous difference outlined above, Sears does not disclose every element of claims 1, 2 and 3 as required, Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), and as such, the Examiner's reliance on Vallis as anticipating claims 1 and 3-5 under 35 U.S.C. § 102(b) is inappropriate, and should be considered allowable.

2. Rejections under 35 U.S.C. 103

The examiner rejected claims 2, 6, 7, under 12-14, 15, 16, and 17 as being

anticipated under 35 U.S.C. 103(a) by various combinations of Vallis, Weiss, Scivoletto, Barr, Jr., Sampson, and Braulke, III. The differences between Vallis and the present invention have been stated above. Weiss does disclose a power cord providing electricity and a hook attached to the body of the pistol-like hair dryer. However, Weiss does not teach a power cord having a hook incorporated therein, as is claimed in the present invention. The power cord and hook of the present invention are incorporated together as integral components attached to the base of the handle. Because Weiss neither claims nor discloses the power cord and hook arrangement disclosed by the present invention, and because there is no suggestion by Weiss nor Vallis to combine an incorporated integral power cord and hook arrangement, the examiner's rejection under 35 U.S.C. § 103(a) is inappropriate. Scivoletto discloses an elongated brush attachment capable of receiving a single strap for securely holding the attachment to the hair dryer. However, Scivoletto does not disclose a brush attachment having a series of tethers that are integral with the brush attachment. The tethers disclosed in the present invention are affixed to the brush attachment in manner that does not require repetitive attachment and detachment of the tethers to the brush attachment. In addition, the series of tethers provide additional stability in holding the brush attachment in place. Because Scivoletto neither discloses nor claims a series of tethers integrally attached with the brush attachment, and because there is no suggestion in Vallis or Scivoletto to combine a hair dryer with an attachment having a series of tethers integrally attached to a brush attachment, the examiner's rejection of Claim 6 under 35 U.S.C. § 103(a) is inappropriate.

Further, the present invention provides a means for not only holding the hair

dryer and various attachments, but also providing electricity to the hair dryer with the necessity of plugging and unplugging the cord. Thus, the combination of Vallis and Barr, Jr. are not antipated as well.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q. 2d 1955, 1956 (Fed. Cir. 1993) A *prima facie* case of obviousness is established by presenting **evidence** that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 U.S.P.Q. 560, 562 (CCPA 1972). Although many sources of suggestion are allowed, this requirement for actual evidence must be met with a clear and particular showing. See, e.g. C.R. Bard Inc. v. M3 Sys., Inc. 1527 F.3d 1340, 1352, 48 U.S.P.Q. 2d 1255, 1232 (Fed. Circ. 1998). A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." See In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q. 1614, 1617 (Fed. Cir. 1999).

Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not

have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). There is nothing in the prior art that would suggest the desirability or obviousness of making the combinations suggested by the examiner. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (CAFC 1988). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

Further, in rejecting claims under 35 U.S.C. 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. 1993) A prima facie case of obviousness is established by presenting **evidence** that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re

Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Although many sources of suggestion are allowed, this requirement for actual evidence must be met with a clear and particular showing. See, e.g. C.R. Bard Inc. v. M3 Sys., Inc. 1527 F.3d 1340, 1352, 48 USPQ2d 1255, 1232 (Fed. Circ. 1998). A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ 1614, 1617 (Fed. Cir. 1999).

To summarize, it appears that the examiner is holding us to a much different standard of obviousness than any of the other patent applications that have been cited as the relevant art. Only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Therefore, the examiner's rejection of claims 2-3 under 35 U.S.C. 103(a) on obviousness grounds was improper. Most importantly there is no suggestion in any of the references for the combination proposed. If a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. Orthopedic Equipment, supra. Applicant feels that, at best, the examiner has cited a number of references variously containing some of the limitations in applicant's claim; however, these references and the limitations for which they were

cited are combined piecemeal, without any suggestion or motivation for their combination and without regard to the purpose of the applicant's invention. This is similar to the scenario in *In re Blammer*, Civ. App. No. 93-1108, slip op. At 3-4 (Fed. Cir. Sept. 21, 1993)(unpublished), wherein the examiner in that case rejected an application as obvious in light of twelve references. The Board of Appeals in that matter concluded that the invention would have been obvious in light of only four of the references, which was also overturned by the Federal Circuit.

It is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,



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APPENDIX

THE CLAIMS ON APPEAL

The claims on appeal are as follows:

1. A hand held hair blow dryer apparatus comprising:
a linearly elongated grappling handle aligned along a base of a lateral centerline of a dryer;
a directional head extending from said handle along said lateral centerline, said directional head having an angularly disposed directional nozzle directed perpendicularly from said lateral centerline;
an air outlet port formed at a center of said nozzle and circumscribed by a peripheral rim;
said directional head supporting heating coils and enclosing said blower; and
brush attachment attached about said peripheral rim covering said air outlet port and attached to said head by brush attachment means.
2. The hand held hair blow dryer apparatus of claim 1, further comprising a power cord extending from said handle and including a hook grasping means.
3. The hand held hair blow dryer apparatus of claim 1, wherein said brush attachment base is formed in a semi-cylindrical manner and supporting a plurality of attached bristles extending outward therefrom in an aligned pattern.

4. The hand held hair blow dryer apparatus of claim 3, wherein said brush attachment base further forms a plurality of air dispersion orifices formed penetrating a wall of the brush attachment base for allowing fluid communication of flowing air through the brush attachment means.

5. The hand held hair blow dryer apparatus of claim 4, wherein said air dispersion orifices are spaced and patterned between attached bristles, such as to allow airflow outward between adjacent bristles.

6. The hand held hair blow dryer apparatus of claim 3, wherein said brush attachment means comprises a series of tethers, affixed at each end to the brush attachment base and designed to circumscribe the head in a manner that forms a firm mechanical connection of the base to the outer peripheral rim.

7. The hand held hair blow dryer apparatus of claim 1 further comprising a wall mounting wall bracket forming a retainer housing having:

a front face surface that forms a concave dryer receiving cavity and a brush receiving cavity, said concave dryer receiving cavity shaped and formed such as to house and receive the hand held hair blow dryer apparatus; and

a rear surface, said rear surface having a pair of blade contacts extending outwardly therefrom and providing a source of insertion into an electrical outlet.

8. The hand held hair blow dryer apparatus of claim 3, wherein said brush

attachment comprises a large round brush having an overall diameter of approximately 1.75 inches.

9. The hand held hair blow dryer apparatus of claim 3, wherein said brush attachment comprises a medium round brush having an overall diameter of approximately 1.25 inches.

10. The hand held hair blow dryer apparatus of claim 3, wherein said brush attachment comprises a small round brush having an overall diameter of approximately 0.75 inches.

11. Canceled.

12. The hand held hair blow dryer apparatus of claim 3, wherein said brush attachment base is formed of wood.

13. The hand held hair blow dryer apparatus of claim 4, wherein said brush attachment base is formed of wood.

14. The hand held hair blow dryer apparatus of claim 5, wherein said brush attachment base is formed of wood.

15. The hand held hair blow dryer apparatus of claim 1, further comprising a spray

element formed integral to said directional head having an entrance orifice for filling an internal volume with water and a trigger to allow water to be discharged through vent apertures for providing a fluid mist in the direction of said vent apertures.

16. A hand held hair blow dryer apparatus comprising:

a linearly elongated grasping handle aligned along a base of a lateral centerline of a dryer;

a directional head extending from said handle along said lateral centerline, said directional head having an angularly disposed directional nozzle directed perpendicularly from said lateral centerline;

an air outlet port formed at a center of said nozzle and circumscribed by a peripheral rim;

said directional head supporting heating coils and enclosing said blower;

brush attachment attached about said peripheral rim covering said air outlet port and attached to said head by brush attachment means; and

a wall mounting wall bracket forming a retainer housing having a front face surface that forms a concave dryer receiving cavity and a brush receiving cavity; a rear surface having a pair of blade contacts extending outwardly therefrom and providing a source of insertion into an electrical outlet.

17. A hand held hair blow dryer apparatus comprising:

a linearly elongated grasping handle aligned along a base of a lateral centerline of a dryer;

a directional head extending from said handle along said lateral centerline, said directional head having an angularly disposed directional nozzle directed perpendicularly from said lateral centerline;

an air outlet port formed at a center of said nozzle and circumscribed by a peripheral rim;

said directional head supporting heating coils and enclosing said blower;

brush attachment attached about said peripheral rim covering said air outlet port and attached to said head by brush attachment means;

a wall mounting wall bracket forming a retainer housing having a front face surface that forms a concave dryer receiving cavity and a brush receiving cavity; a rear surface having a pair of blade contacts extending outwardly therefrom and providing a source of insertion into an electrical outlet; and

a spray element formed integral to said directional head having an entrance orifice for filling an internal volume with water and a trigger to allow water to be discharged through vent apertures for providing a fluid mist in the direction of said vent apertures.